

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE UNITED STATES**

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**EMPIRE HEALTHCHOICE ASSURANCE, INC. DBA  
EMPIRE BLUE CROSS BLUE SHIELD *v.* MCVEIGH  
AS ADMINISTRATRIX OF THE ESTATE OF MCVEIGH****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE SECOND CIRCUIT**

No. 05–200. Argued April 25, 2006—Decided June 15, 2006

Under the Federal Employees Health Benefits Act of 1959 (FEHBA), the Office of Personnel Management (OPM) negotiates and regulates health-benefits plans for federal employees. See 5 U. S. C. §8902(a). FEHBA provides for Government payment of about 75% of health-plan premiums, and for enrollee payment of the rest. §8906(b). Premiums thus shared are deposited in a special Treasury Fund, from which carriers draw to pay for covered benefits, §8909(a). FEHBA has a preemption provision which provides: “The terms of any contract under this chapter which relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law . . . which relates to health insurance or plans.” §8902(m)(1). The Act contains no provision addressing carriers’ subrogation or reimbursement rights. FEHBA’s sole jurisdictional provision vests federal district courts with “original jurisdiction . . . of a civil action or claim against the United States.” §8912. While an OPM regulation channels disputes over coverage or benefits into federal court by designating OPM the sole defendant, see 5 CFR §890.107(c), no law opens federal courts to carriers seeking reimbursement.

OPM has contracted with the Blue Cross Blue Shield Association (BCBSA) to provide a nationwide fee-for-service health plan administered by local companies (Plan). The Plan obligates the carrier to make “a reasonable effort” to recoup amounts paid for medical care, and the statement of benefits the carrier distributes alerts enrollees that recoveries they receive must be used to reimburse the Plan for benefits paid. Petitioner Empire HealthChoice Assurance, Inc. (Em-

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pire), administers the BCBSA Plan as it applies to federal employees in New York State. Respondent Denise McVeigh (McVeigh) is the administrator of the estate of Joseph McVeigh (Decedent), a former Plan enrollee who was injured in an accident. This case originated when a state-court tort suit brought by McVeigh against third parties alleged to have caused the Decedent's injuries terminated in a settlement. Empire filed this suit in federal court invoking 28 U. S. C. §1331, which authorizes jurisdiction over "civil actions arising under the . . . laws . . . of the United States." Empire sought reimbursement of the \$157,309 it had paid under the Plan for the Decedent's medical care, with no offset for McVeigh's attorney's fees or other litigation costs in the state-court tort action. The District Court granted McVeigh's motion to dismiss for want of subject-matter jurisdiction.

The Second Circuit affirmed, holding that Empire's claim arose under state law. Observing that FEHBA's text does not authorize carriers to vindicate in federal court their rights against enrollees under FEHBA-authorized contracts, the court concluded that federal jurisdiction could exist only if federal common law governed Empire's claim. Quoting *Boyle v. United Technologies Corp.*, 487 U. S. 500, 507, 508, the appeals court stated that courts may create federal common law only when state law would (1) "significant[ly] conflict" with (2) "uniquely federal interest[s]." Empire maintained that its contract-derived reimbursement claim implicated "uniquely federal interest[s]" because (1) reimbursement directly affects the United States Treasury and the cost of providing health benefits to federal employees, and (2) Congress has expressed its interest in maintaining uniformity among the States on matters relating to federal health-plan benefits. The court acknowledged that the case involved such interests, but found that Empire had not identified specific ways in which the operation of state law would conflict materially with the policies underlying FEHBA in the circumstances presented. Also rejecting Empire's argument that FEHBA's preemption provision independently conferred federal jurisdiction, the court emphasized that §8902(m)(1) makes no reference to a federal right of action in, or federal jurisdiction over, a contract-derived reimbursement claim.

*Held:* Section 1331 does not encompass Empire's suit. Pp. 9–21.

(a) A case "aris[es] under federal law" for §1331 purposes if "a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." *Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust for Southern Cal.*, 463 U. S. 1, 27–28. Pp. 9–10.

(b) *Clearfield Trust Co. v. United States*, 318 U. S. 363, does not provide a basis for federal jurisdiction here. In *Clearfield*, a Govern-

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ment suit against a bank to recover the amount paid on a Government check on which the payee's name had been forged, *id.*, at 365, the Court held that “[t]he rights and duties of the United States on commercial paper which it issues are governed by federal rather than [state] law,” *id.*, at 366. In post-*Clearfield* decisions, however, the Court made clear that uniform federal law need not always be applied in Government litigation. For example, in *United States v. Kimbell Foods, Inc.*, 440 U. S. 715, 740, the Court declared that “the prudent course” is often “to adopt the readymade body of state law as the federal rule of decision until Congress strikes a different accommodation.” The reimbursement and subrogation provisions in the OPM-BCBSA contract are linked together and depend upon a recovery from a third party under terms and conditions ordinarily governed by state law. Focusing on reimbursement, the appeals court determined that Empire has not demonstrated a significant conflict between an identifiable federal interest and the operation of state law. Unless and until that showing is made, there is no cause to displace state law, much less to lodge this case in federal court. Pp. 10–12.

(c) Empire and *amicus* United States argue that, under *Jackson Transit Authority v. Transit Union*, 457 U. S. 15, 22, Empire's reimbursement claim, arising under the OPM-BCBSA contract, states a federal claim because Congress intended all rights and duties stemming from that contract to be federal in nature.

The reliance placed on *Jackson Transit* is surprising, for the Court there determined that the claim at issue—a union's suit against a city agency to enforce agreements the parties had made in light of §13(c) of the Urban Mass Transportation Act of 1964 (UMTA), which conditioned the city's receipt of federal funds on preservation of employees' collective-bargaining rights—did not arise under federal law, but was instead “governed by state law [to be] applied in state court[t].” *Id.*, at 29. The Court there acknowledged prior decisions “determin[ing] that a plaintiff stated a federal claim when he sued to vindicate contractual rights *set forth by federal statutes* [that] lacked express provisions creating federal causes of action.” *Id.*, at 22 (emphasis added). However, the Court held that these cases did not control because “the critical factor” in each of them was “the congressional intent behind the particular provision at issue.” *Ibid.* Although there were some indications that the UMTA made “§13(c) agreements and collective-bargaining contracts creatures of federal law,” *id.*, at 23, countervailing considerations—primarily a long-standing National Labor Relations Act exemption for labor relations between local governments and their employees—demonstrated a congressional intent to the contrary, *id.*, at 23–24.

Measured against *Jackson Transit's* discussion of when a claim

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arises under federal law, Empire’s contract-derived reimbursement claim is not a “creatur[e] of federal law.” *Id.*, at 23. While distinctly federal elements are involved here, countervailing considerations control, particularly FEHBA’s jurisdictional provision, §8912, which opens the federal district-court door to civil actions “against the United States.” OPM’s regulation, 5 CFR §809.107(c), instructs enrollees seeking to challenge benefit denials to proceed in federal court against OPM “and not against the carrier or carrier’s subcontractors.” Read together, these prescriptions ensure that beneficiaries’ suits will land in federal court. Had Congress found it necessary or proper to extend federal jurisdiction to contract-derived reimbursement claims between carriers and insured workers, it would have been easy enough to say so. Cf. 29 U. S. C. §1132(a)(3). *Jackson Transit* noted that while “private parties in appropriate cases may sue in federal court to enforce contractual rights created by federal statutes,” 457 U. S., at 22, *Jackson Transit* involved no such right.

Nor can §8902(m)(1), FEHBA’s preemption prescription, be read as a jurisdiction-conferring provision. That prescription is unusual in that it renders preemptive contract terms in health insurance plans, not provisions enacted by Congress. A prescription of that unusual order warrants cautious interpretation. Section 8902(m)(1) is a puzzling measure, open to more than one construction, and no prior decision seems to us precisely on point. If §8902(m)(1) does not cover contract-based reimbursement claims, then federal jurisdiction clearly does not exist. But even if §8902(m)(1) reaches such claims, the prescription is not sufficiently broad to confer federal jurisdiction. If Congress intends a preemption instruction completely to displace ordinarily applicable state law, and to confer federal jurisdiction thereby, it may be expected to make that atypical intention clear. Cf., e.g., *Columbus v. Ours Garage & Wrecker Service, Inc.*, 536 U. S. 424, 432–433. Congress has not done so here. Section 8902(m)(1) does not purport to render inoperative *any and all* state laws that in some way bear on federal employee-benefit plans. Cf. 29 U. S. C. §1144(a). And, given that §8902(m)(1) declares no federal law preemptive, but instead, terms of an OPM-BCBSA negotiated contract, a modest reading of the provision is in order. Furthermore, a reimbursement right of the kind Empire here asserts stems from a personal-injury recovery, and the claim underlying that recovery is plainly governed by state law. This Court is not prepared to say, based on the presentations made in this case, that under §8902(m)(1), an OPM-BCBSA contract term would displace every condition state law places on that recovery. The BCBSA Plan’s statement of benefits links together the carrier’s right to reimbursement from the insured and its right to subrogation. Empire’s subrogation right allows it, once it has paid an

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insured's medical expenses, to recover directly from a third party responsible for the insured's injury or illness. Had Empire taken that course, no access to a federal forum could have been predicated on the OPM-BCBSA contract right. The tortfeasors' liability, whether to the insured or the insurer, would be governed not by an agreement to which the tortfeasors are strangers, but by state law, and §8902(m)(1) would have no sway. Pp. 12–18.

(d) Also rejected is the United States' alternative argument that Empire's reimbursement claim arises under federal law for §1331 purposes because federal law is a necessary element of the carrier's claim for relief. In making this argument, the Government relies on *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 U. S. 308, which involved real property owned by Grable that the Internal Revenue Service (IRS) seized to satisfy a federal tax deficiency, *id.*, at 310. Grable received notice of the seizure by certified mail before the IRS sold the property to Darue. Grable later sued Darue in state court to quiet title, asserting that Darue's record title was invalid because the IRS had conveyed the seizure notice improperly under 26 U. S. C. §6335(a), which requires that "notice in writing . . . be given . . . to the owner . . . or . . . left at his usual place of abode or business." Darue removed the case to federal court. Alleging that Grable's title depended on the interpretation of a federal statute, §6335(a), Darue invoked federal-question jurisdiction under 28 U. S. C. §1331. This Court held that the removal was proper because §6335(a)'s meaning was an important federal-law issue that sensibly belonged in a federal court, and the question whether Grable received adequate notice was "the only . . . issue contested in the case." 545 U. S., at 315. This case is poles apart from *Grable*. Here, the reimbursement claim was triggered, not by a federal agency's action, but by the settlement of a personal-injury action launched in state court, and the bottom-line practical issue is the share of that settlement properly payable to Empire. *Grable* presented a nearly pure issue of law, the resolution of which would establish a rule applicable to numerous tax sale cases. Empire's reimbursement claim, in contrast, is fact bound and situation specific. Although the United States is correct that a reimbursement claim may also involve as an issue the extent to which the reimbursement should take account of attorney's fees expended to obtain the tort recovery, it is hardly apparent why a proper federal-state balance would place such a nonstatutory issue under the complete governance of federal law, to be declared in a federal forum. The state court in which the personal-injury suit was lodged is competent to apply federal law, to the extent it is relevant, and would seem best positioned to determine the lawyer's part in obtaining, and fair share in, the tort recovery. The Government's im-

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portant interests in attracting able workers and assuring their health and welfare do not warrant turning into a discrete and costly “federal case” an insurer’s contract-derived claim to be reimbursed from a federal worker’s state-court-initiated tort litigation. This case cannot be squeezed into the slim category *Grable* exemplifies. Pp. 18–21.

396 F. 3d 136, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SCALIA, and THOMAS, JJ., joined. BREYER, J., filed a dissenting opinion, in which KENNEDY, SOUTER, and ALITO, JJ., joined.